

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35672

SCOTT LEE LINT,)	2009 Unpublished Opinion No. 666
)	
Petitioner-Appellant,)	Filed: November 5, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
STATE OF IDAHO,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Respondent.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Ronald E. Bush, District Judge.

Order dismissing application for post-conviction relief, affirmed.

Molly J. Huskey, State Appellate Public Defender; Justin M. Curtis, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Rebekah A. Cudé, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Scott Lee Lint appeals from the district court's order dismissing his application for post-conviction relief after an evidentiary hearing. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Lint pled guilty to manufacturing methamphetamine. I.C. § 37-2732(a)(1)(A). The district court sentenced Lint to a unified term of ten years, with a minimum period of confinement of five years. This Court affirmed Lint's sentence in an unpublished opinion. *State v. Lint*, Docket No. 31218 (Ct. App. Aug. 3, 2005). Lint then filed an application for post-conviction relief alleging various claims of ineffective assistance of counsel, including failure to file a motion to suppress. Lint attached to his application his sworn affidavit, two police reports, and a discovery request from the underlying criminal proceedings.

The first police report indicates that an officer investigated a call regarding an abandoned vehicle located at the entrance to a gravel pit adjacent to a residence. The officer determined from the license plate number that the vehicle belonged to Lint. The officer then noticed footprints in the snow, leading from Lint's vehicle to a nearby wooden shed located behind the residence. The officer contacted the person residing on the property who was later determined to be one of the lessees of the property, including the shed. The resident stated that Lint often worked on the family's automobiles, had been there earlier that day, but should not have been on the property for any reason that night. With the resident's permission to "check the property for Lint to find out why he would be entering the residence without permission, at late hours of the night, and from a suspicious location at the rear of the property," the officer proceeded to the shed with the assistance of the lessee's thirteen-year-old son. The officer could see that the light was turned on in the shed and he yelled Lint's name. The officer advised Lint to exit the shed, heard "shuffling" and "banging" noises, and again ordered Lint to exit the shed. The officer tried to open the door to the shed but it was locked. Shortly thereafter, Lint exited the shed and, when asked what he was doing on the property, indicated that he was working on a motorcycle in the shed. He did not respond when the officer asked him why he had parked in the driveway next door to the property and entered the property from the rear. The officer then entered the shed, saw a small yellow motorcycle on a stand, smelled a strong chemical odor, and discovered items used to manufacture methamphetamine. The officer arrested Lint and secured the shed until police could obtain a search warrant.

A report by a second officer who conducted a further investigation indicates that, upon questioning the resident on the property, he learned that she and her husband leased the property and that her husband, who was in prison, was a friend of Lint. The resident indicated that her husband had asked Lint to look after the resident and her son while he was in prison. Lint mowed the lawn on the property in the summer, worked on the family's vehicles, and kept his "stuff" in the shed. The resident stated that she had not been in the shed for approximately one year. Lint had a motorcycle in the shed he was working on and had placed a lock on the shed but that he normally checked in with her when he came to the property. She was not aware that Lint was in the shed that night.

In his affidavit which accompanied the application, Lint averred that he asked his counsel to file a motion to suppress the evidence found in the shed, but counsel informed him that there

were no grounds to suppress the evidence. Lint further stated that he had a “verbal contract” with the lessee of the property to “occupy” the shed and that he would not have pled guilty if he had known that the state had no evidence to convict him. According to the affidavit, Lint’s counsel coerced him to plead guilty by telling him that the state had enough evidence to convict him.

The state filed a motion for summary dismissal of Lint’s application supported by an affidavit of Lint’s defense counsel. Counsel averred that he discussed the possibility of filing a motion to suppress with a senior attorney at the public defender’s office after reviewing the police reports and the additional evidence provided by the state. According to counsel’s affidavit, Lint never told him that the lessee of the property had rented the shed to Lint in exchange for Lint’s services. Counsel averred that Lint made the decision to enter into the plea agreement after counsel discussed with Lint the possibility of filing a motion to suppress. The district court then summarily dismissed Lint’s application. On appeal, this Court affirmed in part and reversed in part, remanding the case for the district court to conduct an evidentiary hearing on whether counsel was ineffective for failing to file a motion to suppress and, if so, for advising Lint to plead guilty. *Lint v. State*, 145 Idaho 472, 180 P.3d 511 (Ct. App. 2008). On remand, the district court conducted an evidentiary hearing. The district court heard testimony from Lint and his trial counsel and also considered the police reports in the record. The district court held that there was not a basis to argue that Lint had a leasehold interest in the shed sufficient to raise a reasonable probability that a motion to suppress would have succeeded. The district court also held that trial counsel was not ineffective for advising Lint to plead guilty because the motion to suppress would not have succeeded. Accordingly, the district court dismissed Lint’s application. Lint appeals.

II.

ANALYSIS

Lint does not challenge the district court’s factual findings at the evidentiary hearing. Rather, Lint argues that the district court erred in its application of the law to the facts as found. In order to prevail in a post-conviction proceeding, the applicant must prove the allegations by a preponderance of the evidence. I.C. § 19-4907; *Stuart v. State*, 118 Idaho 865, 801 P.2d 1216 (1990). When reviewing a decision denying post-conviction relief after an evidentiary hearing, an appellate court will not disturb the lower court’s factual findings unless they are clearly

erroneous. I.R.C.P. 52(a); *Russell v. State*, 118 Idaho 65, 794 P.2d 654 (Ct. App. 1990). The credibility of the witnesses, the weight to be given to their testimony, and the inferences to be drawn from the evidence are all matters solely within the province of the district court. *Larkin v. State*, 115 Idaho 72, 73, 764 P.2d 439, 440 (Ct. App. 1988). We exercise free review of the district court's application of the relevant law to the facts. *Nellsch v. State*, 122 Idaho 426, 434, 835 P.2d 661, 669 (Ct. App. 1992).

Lint claims that a motion to suppress was likely to have succeeded and, therefore, trial counsel was ineffective for failing to file the motion. Additionally, Lint claims that trial counsel was ineffective for advising him to plead guilty based on the allegedly erroneous conclusion that a motion to suppress was not likely to succeed. A claim of ineffective assistance of counsel may properly be brought under the post-conviction procedure act. *Murray v. State*, 121 Idaho 918, 924-25, 828 P.2d 1323, 1329-30 (Ct. App. 1992). To prevail on an ineffective assistance of counsel claim, the defendant must show that the attorney's performance was deficient and that the defendant was prejudiced by the deficiency. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *Hassett v. State*, 127 Idaho 313, 316, 900 P.2d 221, 224 (Ct. App. 1995). To establish a deficiency, the applicant has the burden of showing that the attorney's representation fell below an objective standard of reasonableness. *Aragon v. State*, 114 Idaho 758, 760, 760 P.2d 1174, 1176 (1988). Where, as here, the defendant was convicted upon a guilty plea, to satisfy the prejudice element, the claimant must show that there is a reasonable probability that, but for counsel's errors, he or she would not have pled guilty and would have insisted on going to trial. *Plant v. State*, 143 Idaho 758, 762, 152 P.3d 629, 633 (Ct. App. 2006). This Court has long adhered to the proposition that tactical or strategic decisions of trial counsel will not be second-guessed on appeal unless those decisions are based on inadequate preparation, ignorance of relevant law or other shortcomings capable of objective evaluation. *Howard v. State*, 126 Idaho 231, 233, 880 P.2d 261, 263 (Ct. App. 1994).

In a post-conviction proceeding challenging an attorney's failure to pursue a motion in the underlying criminal action, the district court may consider the probability of success of the motion in question in determining whether the attorney's inactivity constituted incompetent performance. *Boman v. State*, 129 Idaho 520, 526, 927 P.2d 910, 916 (Ct. App. 1996). Where the alleged deficiency is counsel's failure to file a motion, a conclusion that the motion, if

pursued, would not have been granted by the trial court, is generally determinative of both prongs of the *Strickland* test. *Id.*

At the conclusion of the evidentiary hearing in this case, the district court found:

So as to [the issue of ineffective assistance of counsel for failing to file a motion to suppress] the court finds that the pertinent facts that came out in the context of this hearing are that the issue was discussed at length between [counsel] and Mr. Lint.

This is not a situation where it was simply not addressed in any fashion. On the contrary, it was raised and discussed between Mr. Lint and his counsel. These are my findings from the testimony, on repeated occasions.

....

[Lint] mows the lawn in the summer and works on [the resident's] vehicles. Keeps his stuff in the storage shed. [The resident] had not been in the shed for approximately one year. [Lint] has a padlock on the shed.

[Lint] also has a motorcycle that he was working on for his son inside the shed. . . .

In terms of credibility of the respective witnesses, it seems to me that in this setting where there is nothing . . . in the police report, that is anything other than inferential . . . of an agreement that Mr. Lint was entitled to the exclusive use and possession of the storage shed, effectively in some sort of sublease setting, in consideration of his work on the lawn and an occasional work on a vehicle.

....

That Mr. Lint did not offer anything [that] would support an argument that there was some sort of a leasehold interest that Mr. Lint had acquired; and that to the contrary [counsel] had determined from the information he obtained from Mr. Lint that in particular . . . [t]he padlock was . . . not placed there by Mr. Lint as some sort of an assertion of his leasehold rights against the world and [the resident], but rather as a protected measure by Mr. Lint to try to make sure that [the resident] did not become aware of what he was doing in the shed and manufacturing methamphetamine through some action on her part to go look in the shed which she otherwise would have the right to do.

And in this context the court finds the most plausible explanation of all of that is that Mr. Lint understood that. Understood that even though she apparently had not been headed out that direction, that she could always do so.

He did not want her stumbling into what he was doing in the shed if she chose to do so. Therefore, on those issues, including the admission made by Mr. Lint to the effect that he understood that she could put things in the shed if she had wanted to do so. If she wanted to cut the lock off she could have done so if she considered it part of the property.

....

I accept [counsel's] testimony on this issue which is controverted in the record, that there was not a sufficient basis to argue that there was a leasehold interest such that there was a reasonable probability that he could succeed on the motion to suppress.

[This court] . . . concludes there is no reasonable probability that such a motion would succeed

....

So as to that particular issue, after hearing the testimony and considering the evidence including the police reports that are in evidence, the court finds that there was -- there is no ineffective assistance of counsel that has been proven.

The constitutional safeguards of the Fourth Amendment protect an individual's legitimate expectation of privacy, which has been defined as a subjective expectation of privacy that society is prepared to recognize as reasonable. *Oliver v. United States*, 466 U.S. 170, 177 (1984); *State v. Donato*, 135 Idaho 469, 471, 20 P.3d 5, 7 (2001); *State v. Dreier*, 139 Idaho 246, 251, 76 P.3d 990, 995 (Ct. App. 2003). A Fourth Amendment analysis involves determining whether the defendant exhibited an actual, subjective expectation of privacy by seeking to preserve the matter as private and, if so, whether the defendant's expectation was objectively reasonable under the circumstances. *Smith v. Maryland*, 442 U.S. 735, 740 (1979); *State v. Wilkins*, 125 Idaho 215, 222, 868 P.2d 1231, 1238 (1994).

The district court found that Lint had failed to meet his burden of proving that he had a verbal lease agreement with the resident of the property. This finding is supported by evidence in the record, including the district court's determination regarding Lint's credibility, and is not clearly erroneous. Alternatively, Lint argues that even without an actual lease agreement, he exercised such custody and control over the shed as to support a protectable expectation of privacy. In our prior opinion, we said that from the facts available, "counsel should have identified Lint's custody and control of the shed as the critical factual determination, and counsel thus had a duty to conduct a reasonable inquiry into Lint's rights to use the shed." *Lint*, 145 Idaho at 480, 180 P.3d 511. After hearing the testimony, the district court acknowledged that Lint had some right to use the shed, but found that he did not have a right of control, which remained, based upon the facts and admissions of Lint, with the lessee of the property. Moreover, as to defense counsel's investigation into the issue of custody and control, the district court found that counsel did, indeed, conduct an investigation and had repeated conversations with Lint, at which time Lint did not claim a leasehold or custodial right, but explained that the padlock was for the purpose of secreting the illicit activities inside the shed. These findings of the district court are not clearly erroneous based upon the record following the evidentiary hearing.

Lint failed to meet his evidentiary burden of proving that he had an objectively reasonable expectation of privacy in the shed. A motion to suppress based upon an expectation of privacy in the shed would have failed and, thus, does not support the claim of ineffective assistance of counsel. *See Boman*, 129 Idaho at 526, 927 P.2d at 916. The district court did not err by dismissing Lint's application for post-conviction relief. Because Lint failed to prove that counsel was ineffective in failing to file a motion to suppress, we need not address Lint's claim that counsel was ineffective for advising him to plead guilty based on the low probability of success of a motion to suppress.

We further note that many of Lint's arguments rely, at least in part, on this Court's previous holding in *Lint*, 145 Idaho 472, 180 P.3d 511. In that opinion, this Court reviewed the district court's summary dismissal of Lint's post-conviction claims. At that stage of the proceedings, this Court accepted Lint's allegations as true and conducted a limited review of the record to determine only if Lint had raised a genuine issue of material fact that warranted an evidentiary hearing. At the present stage of the proceedings, we review the record to determine whether Lint has met his evidentiary burden of proving by a preponderance of the evidence that he had a subjective expectation of privacy in the shed which was objectively reasonable. This he has failed to do. Our previous holding does not compel a different result.

III.

CONCLUSION

Lint failed to meet his burden of proving that counsel was ineffective for failing to file a motion to suppress. Therefore, the district court did not err by dismissing this claim or Lint's claim that counsel was ineffective for advising him to plead guilty. Accordingly, the district court's order dismissing Lint's application for post-conviction relief after an evidentiary hearing is affirmed. No costs or attorney fees awarded on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**